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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,373	04/08/2004	John H. Starkey	6009-4701	7639
27123	7590	03/06/2006		
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101				
			EXAMINER RAEVIS, ROBERT R	
			ART UNIT 2856	PAPER NUMBER

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/820,373	STARKEY, JOHN H.	
	Examiner	Art Unit	
	Robert R. Raevis	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Tveter, deceased.

Tveter teaches (col. 2, lines 50-60) a method, including: grinding a 500 gram sample of ore in a test. Such grinding is carried out over a period of time that includes grinding during $\frac{1}{2}$ of the period, and grinding during the subsequent $\frac{1}{2}$ of the period. The grinding is part of the sample preparation, and thus is part of test of EXAMPLE 1. Each of the two grindings over $\frac{1}{2}$ period is a step. Finally, please note that the claim is limited to the steps provided after the work "comprising" (line 2 of claim 1).

Claims 5,6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tveter, deceased et al.

As to claims 5,6, Tveter refers (col. 1, line 56) to 500 gram samples, while the remaining disclosure refers to various EXAMPLES, *each of which* requires sample to be tested. This is suggestive of grinding a 2kg size sample to accommodate all of the tests for a single sample of material. In the alternative, it is known to retest material to assure that test results are accurate, suggestive of a need for a greater sample size.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Statement in view of Pennington.

Applicant describes (pages 1-2) testing of ore with both Bond ball mill test and JK impact test, such testing enabling basic grinding power requirement to be determined.

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The test employs grinding, which is carried out over a period of time that is not immediate, necessarily suggestive of grinding carried out over a first initial period or time and second final period of time, both periods of which are sequential.

Applicant's test does not state that the sample for the testing is taken from the same sample.

As to claims 1-5, it would have been obvious obtain a sample for testing with Pennington's sampler because Pennington teaches that a representative ore sample may be obtained by using of a scoop. The material sampled from the scoop is representative of the ore on a conveyor, suggestive of use of that ore for testing.

As to claim 7, note was made of the combination of "the ore from the first step" (line 4 from last) in combination with remaining claim limitations.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 7am to 4pm. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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